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AVIATION

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CONSUMER PROTECTION

In the year during which the newly formed CAB Office of Consumer Affairs has been operating, it has handled 6,200 complaints against the airlines and has secured adjustments in some 500 cases. One of the accomplishments of the new office has been to require all airlines to notify passengers with confirmed reservations for whom there was no space available that the airline must either find alternative transportation which will get the passenger to his destination within two hours of the originally scheduled time, or pay \$200 liquidated damages. While CAB regulations had required such written notice only two airlines had been providing "bumped" passengers with such statements before the Office of Consumer Affairs exerted its influence.

TREATIES

Implementing an anticipated retaliatory move against Australia after that country's rejection of domestic United States carriers' applications for increases in service (*Law.Am.* Oct., 1971, "New Routes") the CAB has barred Australia's Qantas from initiating jumbo jet service to this country.

The action by the CAB is the first taken under a year-old regulation which permits retaliation against a foreign nation which has signed a bilateral treaty, without having to renounce the treaty itself.

SAFETY STANDARDS

The National Transport Safety Board has called for a study by the FAA and CAB to determine the feasibility of formulating a policy whereby

parties to a bilateral air route agreement would have the right to inspect . . . the facilities, services and procedures of the other nation's airlines." The FAA and CAB have previously opposed any arrangement for reciprocal safety standards, but numerous crashes in the United States in recent years involving foreign aircraft will probably influence these administrative bodies to withdraw from their original position.

IATA

Following IATA's failure to reach agreement on North Atlantic fares, Scandinavian Airlines System and Alitalia have filed new fare packages reflecting marked reduction—as much as \$200 lower than existing first class and economy round trip fares.

AIRPORTS

United States

Government officials have indicated that if an airport crisis is to be avoided during this decade, there must be both an expansion of existing facilities and an initiation of new airport construction. But so far all efforts to build new airports or to expand existing ones have met with vigorous opposition from environmental groups.

The power exerted by the environmental lobby is evident from the recent history of many of the nation's airports. In Miami an attempt to build a new jetport west of the city was halted after considerable construction. Attempts to find another jetport location which will not adversely affect the Florida Everglades are still in progress. Similarly the cities of St. Louis and Minneapolis are both trying to find environmentally acceptable sites for badly needed new airports.

Expansion of existing facilities has also been effectively halted. Runway expansion projects at both Los Angeles International Airport and Boston's Logan International Airport have been delayed until compliance with noise level and other environmental standards is assured.

Representatives of the airline industry have been hoping for federal intervention to override local government decision-making which has of late been greatly influenced by environmental arguments. Instead the only federal action taken thus far, the establishment of procedures under the National Environmental Policy Act and the Airport and Airways

Development Act designed to balance environmental considerations against the need for an expanded air transport system, has only served to impose additional delays in the form of voluminous paper work.

The outlook for future federal help for the airports is not bright. President Nixon recently indicated a desire to use money allocated under the Airport and Airways Development Act to offset administrative costs of the FAA rather than for the intended expansion of our nation's airport capacity. Further, legislation currently being considered by Congress will, if passed, establish new federal environmental restrictions on the airlines.

In testimony before the Senate Commerce Subcommittee on Aviation, Secor D. Browne, current chairman of the CAB, indicated that proposed legislation aimed at reducing the noise output of commercial jets was economically impractical. Browne testified that noise abatement equipment would cost between \$500,000 and \$1 million per aircraft and that the reduction in noise obtained by this expenditure "would be only marginally discernible."

Foreign

A consortium of United States and foreign banks has guaranteed a \$20 million loan to Brazil to finance construction of the proposed International Airport in Rio de Janeiro.

AERIAL HIJACKING

Airline insurance companies, stressing a need for the implementation of effective ground security, have indicated that the new program of employing sky marshalls may create new liabilities for the carriers. It has been suggested that while employing armed guards to fly with the aircraft reduces the chances of a successful hijacking, the chances of incurring civil liability are increased because of the possibility of passengers being injured as a result of the actions of the sky marshalls.

Eastern Airlines has announced that it now has the facilities to scan passengers in order to detect potential hijackers at every U. S. airport serviced by Eastern. Full coverage was obtained following the installation of some 220 magnetometers at departure gates throughout the country. The new improved device is able to detect metal objects and also indicates the area of the body where the potential weapon is located.

CHARTERS

Trans International Airlines has instituted a passenger charter to Australia. TIA is the first United States non-scheduled airline to take advantage of Australia's elimination of a ban on all U.S. supplemental carrier flights.

Knut Hammarskjold, Director General of IATA, has appealed to the governments of the world to curb the increasing charter operations of the nonscheduled airlines. Hammarskjold, in a speech given at an ICAO convention in Vienna, placed principal blame for the economic difficulties of IATA member airlines on growing competition from charter operations, mainly on the lucrative North Atlantic routes.

As if in answer the CAB has filed suit in New York City against five travel agencies in an attempt to halt alleged black market charter operations. The principal illegal activity charged involves allowing ineligible persons to take advantage of the reduced charter rates. Under current regulations only persons who have been in a qualifying affinity organization for at least six months are allowed to participate in charters.

To date charter violations have been handled through time consuming CAB administrative procedures. The Board decided to attempt to speed up the enforcement process by obtaining a court enforced injunction. In the trial of the case the CAB suffered an initial setback when the trial judge granted a continuance to consider a defense motion to dismiss on the ground that federal courts may lack jurisdiction to enforce the CAB's charter flight rules.

RECENT UNITED STATES DECISIONS

(Avi. citation refers to CCH Aviation Law Reporter.)
Click v. Thuron Industries, Inc., 11 Avi. 17,781 (1970)

The Texas appellate court held that the state wrongful death statute did not apply where the fatality occurred outside the state. The court rejected the significant contacts doctrine and held that the traditional concept of *lex loci delicti* applied.

Outlook Store Inc. v. Cardinal Air Services, 11 Avi. 17,848 (1970).

New York Civil Court held that the failure of an air carrier to deliver a shipment after taking payment for same constituted willful misconduct within the terms of the Warsaw Convention. Consequently,

the Convention's limitation of liability is not available to the carrier in a civil suit for damages caused by the non-delivery.

U.S. v. Ware, 11 Avi. 17,863 (1970)

Defendant was tried under 49 U.S.C. § 1472(1) for attempting to board a commercial airplane while carrying a concealed weapon. Defendant maintained that since the gun he carried was not loaded it did not constitute a "dangerous weapon" within the meaning of the Code provision. The court held that the purpose of the law was to prevent hijackings and that since an unloaded gun could be effectively used, the gun in question was within the meaning of the Code's language.

Lockheed Air Terminal, Inc. v. City of Burbank, 11 Avi. 17,850 (1970)

Plaintiff airline sought to invalidate a local ordinance prohibiting the take-off of jet aircraft from a local airport between 11 P.M. and 7 A.M. The U.S. District Court, in invalidating the ordinance, held that such a law invades the federally pre-empted control of navigable airspace and imposes an undue burden on interstate commerce.

White v. Trans World Airlines, Inc. 11 Avi. 17,888 (1970)

Plaintiff sought damages for the wrongful death of her husband, the pilot of one of two airplanes involved in a mid-air crash. Plaintiff contended that the vertical separation established by the air traffic controller was insufficient and constituted negligence on the part of the defendant government. The U. S. District Court in dismissing the complaint held that a 1,000 foot vertical separation constituted safe clearance and that having established such separation, air traffic controllers were under no duty to inform the aircraft of their proximity.

Militch v. Irish International Airlines, 11 Avi. 17,893 (1970)

The United States Court of Appeals sitting in New York reaffirmed the principle that the Warsaw Convention applies to charter flights and went on to hold that the two year Statute of Limitations contained in the Convention barred plaintiff's recovery. The court held that notice of the limitation statute need not appear on the passenger's ticket.

Leroy v. United Air Lines, Inc., 11 Avi. 17,919 (1970)

The Illinois Circuit Court held that an action for wrongful death brought under the Death on the High Seas Act could be maintained in a state court.

City of Oakland v. Nutter, 11 Avi. 17,945 (1970)

A California appellate court held that in a condemnation proceeding to acquire an air easement over property adjoining an airport, it is proper to consider noise, vibrations, and other interferences with the property below in determining the amount of the condemnation award.

Nader v. F.A.A., 11 Avi. 17,980 (1971)

The United States Court of Appeals for the District of Columbia held that the smoking of passengers during commercial flights did not pose such a safety hazard or interfere with the rights of non-smoking passengers in such a way as to justify an emergency ban on in-flight smoking.

Northeast Airlines, Inc. v. New Hampshire Aeronautics Commission, 11 Avi. 17,984 (1971)

The New Hampshire Supreme Court held that a fee of \$1 for each passenger boarding an aircraft at a publicly operated airport which was imposed by the state constituted a valid charge for the use of the state's airport facilities and did not constitute invalid state taxation of interstate commerce.

Manos v. Trans World Airlines, Inc., 11 Avi. 17,996 (1970)

The United States District Court sitting in Illinois held that an aircraft manufacturer is liable without negligence under the doctrine of implied warranty, to passengers injured as a result of a dangerous defect in the aircraft.

McDiuit v. Pan American World Airways, Inc., 11 Avi. 18,040, (1970)

A New York Supreme Court in granting plaintiff's motion for a partial summary judgment held that in an action for damages brought by a passenger, an airline which had signed the Montreal Interim Agreement (which establishes absolute liability up to \$75,000 for civil damages) could not avail itself of any defense under Article 20(1) of the Warsaw convention.

Boryk v. Aerolineas Argentinas, 11 Avi. 18,041 (1971)

Plaintiff attempted to overcome the liability limitations of the Warsaw Convention. The New York United States District Court held that while the type size on the ticket was so small as not to give adequate notice

of the liability limitations, the defendants allegation that it had orally informed plaintiff's decedent of such limitation was sufficient to overcome plaintiff's motion for a partial summary judgment.

Scheinman v. Eastern Airlines, Inc., 11 Avi. 18,047 (1971)

Plaintiff instituted an action for damages to recover the value of jewelry allegedly stolen from her baggage while she was a passenger of the defendant airline. In dismissing the complaint a New York Supreme Court held that the Tarriff filed by the air-carrier specifically required written notice of the claim within 45 days of the loss, and that the oral notice which had been given by the plaintiff was ineffective.

OUTER SPACE

Representatives of 28 nations including the Soviet Union have agreed to the terms of a draft convention providing for the payment of compensation for damages caused by an object launched into space. The convention was subsequently approved by 90 nations in committee, and passage by the General Assembly is assured.

Agreement on the draft came after seven years of negotiations attempting to reconcile the conflicting views of the United States and the Soviet Union on the question of arbitration by an international commission in the event that the states concerned could not reach agreement within one year. A compromise was finally reached when the Soviet Union agreed to provide for arbitration as long as the findings of the commission constituted only a recommendation having no legal binding effect.